

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FELICIANO TAX, <i>Plaintiff,</i>	§ § § § § § § § §	VS. CIVIL ACTION NO. 4:21-cv-1347
RANDALLS FOOD & DRUGS, L.P. d/b/a RANDALL'S PHARMACY #3064, <i>Defendant.</i>		

EXHIBIT A – INDEX OF MATTERS BEING FILED

TAB	DATE	DOCUMENT
1	n/a	Docket Sheet
2	3/23/2021	Plaintiff's Original Petition & Plaintiff's First Discovery Requestst to Defendant Randalls Food & Drugs, L.P. d/b/a Randall's Pharmacy #3064
3	3/25/2021	Executed Return of Service for Randalls Food & Drugs, L.P. d/b/a Randall's Pharmacy #3064
4	4/16/2021	Defendant's Original Answer and Affirmative Defenses

Respectfully submitted,

By: /s/ **Trek Doyle**

Trek Doyle

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ATTORNEYS FOR DEFENDANT



Doyle & Seelbach

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the above and foregoing document has been served by electronic delivery to counsel identified below on this, the 23rd day of April, 2021.

Roy J. Elizondo
Law Offices of Domingo Garcia LLP
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relizondo@millerweisbrod.com
ATTORNEY FOR PLAINTIFF

TAB 1

HCDistrictclerk.comTAX, FELICIANO vs. RANDALLS FOOD & DRUGS L P
(D/B/A RANDALLS PHARMACY #3064)

4/19/2021

Cause: 202117001

CDI: 7

Court: 269

APPEALS

No Appeals found.

COST STATMENTS

No Cost Statments found.

TRANSFERS

No Transfers found.

POST TRIAL WRITS

No Post Trial Writs found.

ABSTRACTS

No Abstracts found.

SETTINGS

No Settings found.

NOTICES

No Notices found.

SUMMARY**CASE DETAILS**

File Date	3/23/2021
Case (Cause) Location	Civil Intake 1st Floor
Case (Cause) Status	Active - Civil
Case (Cause) Type	PERSONAL INJ (NON-AUTO)
Next/Last Setting Date	N/A
Jury Fee Paid Date	N/A

CURRENT PRESIDING JUDGE

Court	269th
Address	201 CAROLINE (Floor: 13) HOUSTON, TX 77002 Phone:7133686370
JudgeName	CORY SEPOLIO
Court Type	Civil

ACTIVE PARTIES

Name	Type	Post Jdgm	Attorney
TAX, FELICIANO	PLAINTIFF - CIVIL		ELIZONDO, ROY JESSE III

RANDALLS FOOD & DRUGS L P (D/B/A RANDALLS PHARMACY #3064)	DEFENDANT - CIVIL	DOYLE, TREK C.
RANDALLS PHARMACY #3064	DEFENDANT - CIVIL	
RANDALLS FOOD & DRUGS L P (D/B/A RANDALLS PHARMACY #3064) MAY BE	REGISTERED AGENT	

INACTIVE PARTIES

No inactive parties found.

JUDGMENT/EVENTS

Date	Description	Order Signed	Post Jdgm	Pgs	Volume /Page	Filing Attorney	Person Filing
4/16/2021	ANSWER ORIGINAL PETITION			0		DOYLE, TREK C.	RANDALLS FOOD & DRUGS L P (D/B/A RANDALLS PHARMACY #3064)
3/23/2021	ORIGINAL PETITION			0		ELIZONDO, ROY JESSE III	TAX, FELICIANO

SERVICES

Type	Status	Instrument	Person	Requested	Issued	Served	Returned	Received	Tracking	Deliver To
CITATION SERVICE	RETURN/EXECUTED	ORIGINAL PETITION	RANDALLS FOOD & DRUGS L P (D/B/A RANDALLS PHARMACY #3064) MAY BE	3/23/2021	3/24/2021	3/25/2021			73853301	E-MAIL
1999 BRYAN ST STE 900 DALLAS TX 75201										

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
95349127	Defendant's Original Answer and Affirmative Defenses		04/16/2021	5
95000129	Return of Service		03/25/2021	1
94954554	Plaintiff's Original Petition and Request for Disclosure		03/23/2021	6
-> 94954555	Plaintiffs First Discovery Requests to Defendant Randalls Food & Drugs, L.P. d/b/a Randalls Pharmacy #3064		03/23/2021	10

TAB 2

CAUSE NO. _____

FELICIANO TAX	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
RANDALLS FOOD & DRUGS, L.P.	§	
d/b/a RANDALL'S PHARMACY #3064	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF THIS COURT:

Comes Now, Feliciano Tax ("Plaintiff") complaining of Randalls Food & Drugs, L.P. d/b/a Randall's Pharmacy #3064 ("Defendant") and for cause of action would respectfully show to the Court the following:

I. DISCOVERY PLAN

1. Plaintiff intends to conduct discovery in this matter under Level 3 of the Texas Rules of Civil Procedure.

II. STATEMENT REGARDING MONETARY RELIEF SOUGHT

2. Pursuant to Texas Rules of Civil Procedure 47(c), Plaintiff seeks monetary relief over \$1,000,000.00. Discovery in this matter has just commenced and, therefore, Plaintiff cannot reliably state a maximum amount of damages he is seeking at this time and reserves the right to supplement in accordance with the Texas Rules of Civil Procedure.

III. PARTIES

3. Plaintiff is a resident of Harris County, Texas.

4. Defendant Randalls Food & Drugs, L.P. d/b/a Randalls Pharmacy #3064 ("Randall's") is a for-profit business entity that carries on business in Harris County, Texas and various other locations. Randall's may be served with service of process by service upon its registered agent,

CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136. **Citation is requested at this time.**

IV. JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this matter because the amount in controversy exceeds the minimum jurisdictional limit of the Court. Venue is proper in Harris County pursuant to C.P.R.C. § 15.002(a)(1)-(2).

V. FACTUAL BACKGROUND

6. On August 1, 2019, Plaintiff Feliciano Tax was an employee of Randalls Food & Drugs, L.P. d/b/a Randalls Pharmacy #3064. Mr. Tax was working at Defendant's place of business located at 5130 Bellaire Blvd., Bellaire, Texas 77401.

7. At Defendant's premises, Plaintiff was responsible for maintenance and had been a dedicated employee for nearly forty (40) years. On the date of the incident, Mr. Munguia was unloading heavy boxes from a "six wheel buggy" without the aid of a necessary spotter or secondary employee. As he was completing the fourth load, he was injured and immediately reported his injury to his supervisor.

8. Due to the negligence of Defendant, Mr. Tax sustained a tear to his right shoulder, causing him lifetime restrictions.

9. Defendant, Randalls Food & Drugs, L.P., d/b/a Randalls Pharmacy #3064., as an employer, was not a subscriber to Workers' Compensation insurance at the time of the incident and is thus a "non-subscriber" under Texas law. Randalls Food & Drugs, L.P., d/b/a Randalls Pharmacy #3064 is prohibited from asserting any common law defenses (such as comparative negligence, assumption of the risk, fellow-employee doctrine, sudden emergency, unavoidable accident, etc.) against Mr. Tax.

**VI. NEGLIGENCE OF DEFENDANT RANDALLS FOOD & DRUGS, L.P., D/B/A RANDALLS
PHARMACY #3064**

10. The negligence of Defendant was the proximate cause of the injuries and damages to the Plaintiff as more fully set forth below. Defendant failed in one or more of the following particulars:

- A. In failing to provide a safe working environment or workplace;
- B. In failing to provide proper safety equipment;
- C. In failing to properly warn of the hazards associated with unloading heavy boxes;
- D. In failing to provide proper safety standards and practices, such as a safe way to unload heavy boxes;
- E. In failing to provide more than one employee to safely handle heavy loads without injury;
- F. In failing as an employer to adhere and enforce safety regulations set by the Occupational Safety and Health Administration; and
- G. Other acts so deemed negligent/

11. The above and foregoing acts and/or omissions were a proximate cause of Plaintiff's injuries and damages and were committed and/or omitted by Defendant, its agents, servants, and/or employees in the course and scope of their agency, representation and/or employment.

**VII. GROSS NEGLIGENCE OF DEFENDANT RANDALLS FOOD & DRUGS, L.P., D/B/A RANDALLS
PHARMACY #3064**

12. Defendant was grossly negligent and acted with malice, as those terms are understood under Texas law, and such conduct was a proximate cause of the occurrence and Plaintiff's damages. Defendant's malicious and grossly negligent conduct justifies the imposition of punitive and exemplary damages both as punishment to Defendant for its callous disregard and

as a deterrent to others from engaging in similar conduct. Plaintiff therefore asks for and is entitled to punitive and exemplary damages in addition to all actual damages.

VIII. DAMAGES

13. Because of the actions and conduct of Defendant set forth above, Plaintiff suffered serious bodily injuries and damages. By reason of those injuries and the damages flowing in law therefrom, this suit is maintained.

14. Because of the nature and severity of the injuries Plaintiff sustained, he has suffered physical pain, mental anguish, physical impairment, disfigurement and, in reasonable probability, he will continue to suffer physical pain, mental anguish, physical impairment, and disfigurement into the future.

15. The injuries sustained by Plaintiff have required medical treatment in the past and, in reasonable probability, will require other and additional medical treatment in the future. Charges incurred by Plaintiff for such medical treatment in the past and those which will in reasonable probability be incurred in the future have been and will be reasonable charges made necessary by the incident in question.

16. As a direct and proximate result of the injuries, Feliciano Tax has suffered diminished earning capacity in the past and will continue to suffer a loss of earnings into the future. To compensate for this loss, he seeks recovery of loss of past and future earning capacity.

IX. RESERVE THE RIGHT TO AMEND & SUPPLEMENT

17. These allegations against Defendant are made acknowledging that investigation and discovery, although undertaken, are continuing in this matter. As further investigation and discovery are conducted, additional facts will surely be uncovered that may and probably will

necessitate further, additional, and/or different allegations, including the potential of adding parties to and/or dismissing parties from the case. The right to do so is, under Texas law, expressly reserved.

X. REQUEST FOR DISCLOSURE TO DEFENDANT

18. Pursuant to Rule 194, Defendant is requested to disclose within the time period set forth in Rule 194.3 the information or material described in Rule 194.2(a) - 194.2(l).

XI. PRE-JUDGMENT INTEREST

19. Plaintiff would additionally say and show that she is entitled to recovery of pre-judgment interest in accordance with law and equity as part of her damages herein, and Plaintiff here and now sues for recovery of pre-judgment interest as provided by law and equity under the applicable provisions of the laws of the State of Texas.

XII. JURY DEMAND

20. Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Plaintiff hereby demands a trial by jury and the appropriate fee has been previously tendered.

XIII. DESIGNATED E-SERVICE EMAIL ADDRESS

21. The following is the undersigned attorney's designation of electronic service email address for all electronically served documents and notices, filed and unfiled, pursuant to Tex. R. Civ. P. 21(a) and 21(f)(2). (jarreaga@millerweisbrod.com). This is the undersigned's ONLY electronic service email address, and service through any other email address will be considered invalid.

XIV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that upon final trial, Plaintiff recover actual damages as specified

above from Defendant, plus costs of Court, pre-judgment and post-judgment interest at the legal rate, and have such other and further relief, general and special, at law and in equity, to which Plaintiff may be justly entitled under the facts and circumstances.

Respectfully submitted,

LAW OFFICES OF DOMINGO GARCIA, L.L.P.

6200 Gulf Freeway, Suite 410
Houston, Texas 77023
Telephone: (713) 349-1500
Facsimile: (713) 432-7785

/s/ Roy J. Elizondo, III

ROY J. ELIZONDO, III
State Bar No.: 24036519
relizondo@millerweisbrod.com

ATTORNEY FOR PLAINTIFF

TAB 3

CAUSE NUMBER: 2021-17001

**FELICIANO TAX
PLAINTIFF**

VS.

**IN THE 269TH JUDICIAL DISTRICT
COURT OF HARRIS COUNTY, TEXAS****RANDALLS FOOD & DRUGS, L.P. D/B/A
RANDALL'S PHARMACY #3064
DEFENDANT****RETURN OF SERVICE**

My name is **GUY CONNELLY**. I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am in all ways competent to make this affidavit and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is: 1320 QUITMAN ST. STE 100, HOUSTON, HARRIS COUNTY, TX 77009, U.S.A.

ON Wednesday March 24, 2021 AT 10:44 AM - CITATION, PLAINTIFF'S ORIGINAL PETITION, REQUEST FOR DISCLOSURE, AND PLAINTIFF'S FIRST DISCOVERY REQUESTS TO DEFENDANT RANDALLS FOOD & DRUGS, L.P. D/B/A RANDALL'S PHARMACY #3064 came to hand for service upon RANDALLS FOOD & DRUGS, L.P. (D/B/A RANDALL'S PHARMACY #3064) BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM.

On Thursday March 25, 2021 at 11:00 AM - The above named documents were hand delivered to: RANDALLS FOOD & DRUGS, L.P. (D/B/A RANDALL'S PHARMACY #3064) BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM @ 1999 BRYAN ST., STE. 900, DALLAS, TX 75201, in Person. By delivering to Lindsey Barrientez, Intake Specialist

FURTHER AFFIANT SAYETH NOT.

STATE OF TEXAS

DECLARATION

"My name is **GUY CONNELLY**, my date of birth is 11/04/1951 my business address is **1320 QUITMAN STREET, HOUSTON, TX 77009**, and I declare under penalty of perjury that this affidavit is true and correct."

Executed in **Dallas County, State of Texas on Thursday March 25, 2021**

/s/GUY CONNELLY

Declarant

PSC#2201 EXP. 09/30/22

Appointed in accordance with State Statutes

2021.03.544326

TAB 4

CAUSE NO. 2021-17001

FELICIANO TAX,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
VS.	§	269TH JUDICIAL DISTRICT
	§	
RANDALLS FOOD & DRUGS, L.P.	§	
d/b/a RANDALL'S PHARMACY #3064,	§	
<i>Defendant.</i>	§	HARRIS COUNTY, TEXAS

DEFENDANT'S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

Defendant Randalls Food & Drugs, L.P. d/b/a Randall's Pharmacy #3064 ("Defendant") hereby submits its Original Answer to Plaintiff's Original Petition and would show as follows:

GENERAL DENIAL

1. Without waiving any other defenses Defendant may have or hereafter come to have or urge, Defendant generally denies each and every material allegation in Plaintiff's Original Petition (and all subsequent amended and supplemental Petitions filed herein) pursuant to Rule 92 of the Texas Rules of Civil Procedure and demands strict proof thereof by a preponderance of the evidence or by clear and convincing evidence as the law requires.

AFFIRMATIVE DEFENSES

Without conceding that the following are affirmative defenses for which Defendant bears the burden of proof, Defendant asserts that:

2. Any supposed hazard at issue in the incident was open and obvious. Defendant owed no duty to Plaintiff with respect to open and obvious hazards.

3. Defendant relies upon the proportionate responsibility provisions of Chapter 33 of the Texas Civil Practice and Remedies Code. The responsibility of the parties, including Plaintiff, must be compared by the trier of fact. Plaintiff was certainly a proximate, if not the sole cause of his own incident and injuries. Without doubt, Plaintiff was more than fifty percent responsible for the incident in question and is therefore barred from recovery.

4. Any award of pre-judgment interest for damages that have not yet accrued would violate Defendant's rights to substantive and procedural due process under the Fifth and Fourteenth Amendments to the United States Constitution, as well as Article I, Sections 14, 16, and 19 of the Texas Constitution.

5. Defendant pleads further that any recovery of medical expenses or healthcare expenses allegedly incurred by Plaintiff, is limited to the amount actually paid or incurred by or on behalf of Plaintiff, if any, pursuant to Tex. Civ. Prac. & Rem. Code §41.0105. Defendant respectfully requests this Honorable Court to compute Plaintiff's award, if any, in accordance with the language of Section 41.0105 of the Texas Civil Practice and Remedies Code. Defendant also requests that Plaintiff prove (1) that reasonable and necessary medical or healthcare expenses do exist, (2) what part of the medical or healthcare expenses have actually been paid or for which Plaintiff remains liable; and (3) that the medical or healthcare expenses claimed resulted from conduct of Defendant.

6. To the extent Plaintiff seeks punitive or exemplary damages, Defendant relies upon the limitations and other provisions of Chapter 41 of the Texas Civil Practices & Remedies Code.

**OBJECTION AND/OR RESERVATION TO
OBJECT TO PROPER NOTICE PURSUANT TO TEX. R. CIV. P. 193.7**

To the extent Plaintiff purports to invoke Texas Rule of Civil Procedure 193.7 or any similar rule, Defendant objects to its timeliness as discovery has not yet been exchanged and Plaintiff cannot, in good faith, provide proper notice that Plaintiff will use documents produced by Defendant against it. Defendant further disputes that its deadline to object, pursuant to Texas Rule of Civil Procedure 193.7 or any similar rule, to the authenticity of a document Defendant may produce in the future is triggered by any notice contained in Plaintiff's petition. Defendant does not waive, and reserves the right, to object to documents later identified with specificity by Plaintiff in any future notice pursuant to Texas Rule of Civil Procedure 193.7 or any similar rule.

**OBJECTION AND/OR RESERVATION TO
OBJECT TO PROPERLY SERVED DISCOVERY**

To the extent Plaintiff purports to serve discovery requests with its Petition, Defendant objects to the timeliness of such requests, as a party cannot serve discovery until after the initial disclosures under Rule 194 are due, pursuant to Texas Rule of Civil Procedure 192.2(a). Defendant requests that any prematurely served discovery be re-served after the initial disclosures have been exchanged.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by his suit, that Defendant be dismissed from this action, awarded court costs and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

By: /s/ **Trek Doyle**

Trek Doyle

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Karl Seelbach

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ATTORNEYS FOR DEFENDANT



Doyle & Seelbach

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the above and foregoing document has been served by electronic delivery to counsel identified below on this, the 16th day of April, 2021.

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ATTORNEYS FOR PLAINTIFF